

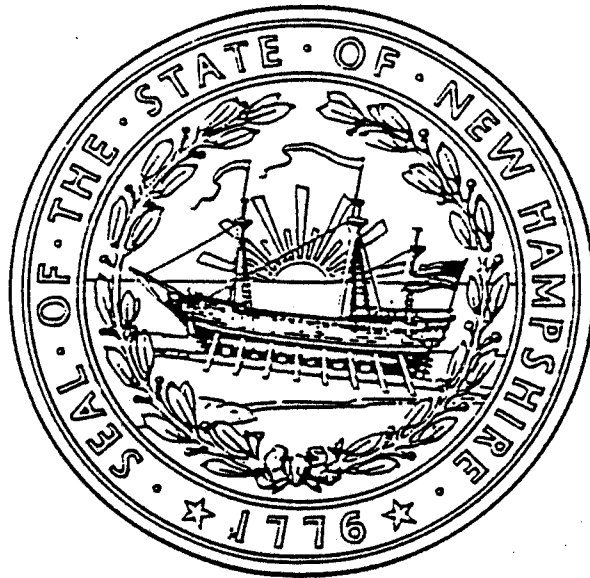
# STATE OF NEW HAMPSHIRE

REPORT OF THE

## ENERGY FACILITY SITING, LICENSING & OPERATION STUDY COMMITTEE

OF THE

NEW HAMPSHIRE GENERAL COURT



August 30, 1990

STATE OF NEW HAMPSHIRE

Report of the

ENERGY FACILITY SITING,  
LICENSING, AND OPERATION  
STUDY COMMITTEE

of the

NEW HAMPSHIRE GENERAL COURT

Presented by

Senator Edward C. Dupont

Representative Beverly Rodeschin

Co-Chairmen

August 20, 1990

STATE OF NEW HAMPSHIRE

ENERGY FACILITY SITING, LICENSING, AND OPERATION  
STUDY COMMITTEE

VOTING COMMITTEE MEMBERS

Senator Edward Dupont (Co-Chairman)  
Senator Wayne King  
Senator Mary Nelson  
Senator Eleanor Podles

Representative Beverly Rodeschin (Co-Chairman)  
Representative David Dow  
Representative Rick Trombley  
Representative Charles Vogler

EX-OFFICIO COMMITTEE MEMBERS

William Abbott, Land Conservation Investment Program  
Ralph Johnson, Public Service Company of NH  
Earl Legacy, Public Service Company of NH  
Elizabeth Blanchard, City of Concord  
Paul Cavicchi, Bridgewater Steam Corp.  
Paul Doscher, Society for the Protection of NH Forests  
Christopher Flemming, EnergyNorth, Inc.  
David Foote, Unitil Power Corp.  
Keith Forrester, Wheelabrator Environmental Systems  
Michael Holmes, Consumer Advocate  
Richard Lund, First NH Exeter Banking Co.  
Jonathan Osgood (Clerk), Governor's Energy Office  
Harold Turner, Business and Industry Association  
Robert Varney, Department of Environmental Services

CONTRIBUTING INDIVIDUALS

John Dabuliewicz, Department of Environmental Services  
Tim Drew, Department of Environmental Services  
William Golding, Governor's Energy Office  
Charles Holtman, Assistant Attorney General  
Bruce Beckley, Public Service Company of NH  
Scott Maltzie, Governor's Energy Office  
Lois Schmeltzer, NH Senate Staff  
Arnie Wight, Principled Negotiations, Inc.

The committee particularly wishes to thank Lois Schmelzer for her long hours of effort in preparing the minutes of each meeting.

STATE OF NEW HAMPSHIRE  
ENERGY FACILITY SITING,  
LICENSING, AND OPERATION  
STUDY COMMITTEE

TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
DELIBERATIONS	3
OPERATIONS	11
RECOMMENDATIONS	13
APPENDIX I	REVISED VERSION OF RSA 162-H
APPENDIX Ia	GENERAL SUMMARY OF CHANGES
APPENDIX Ib	TABLE OF CONTENTS
APPENDIX Ic	REVISED VERSION OF RSA 162-H
APPENDIX Id	DETAILED SUMMARY OF CHANGES
APPENDIX II	EXISTING VERSION OF RSA 162-F
APPENDIX III	EXISTING VERSION OF RSA 162-H

## INTRODUCTION

The Energy Facility Siting, Licensing, and Operation Study Committee was created by vote of the New Hampshire General Court in its 1989 session. It was formed based on a recommendation offered by the State Electrical Energy Needs Planning Committee in its report dated November 30, 1988. The recommendation reads:

- 2b. The committee recommends that the New Hampshire General Court investigate the procedures for siting, licensing and operation of energy facilities for efficiency and fairness. The Committee further recommends that the N.H. General Court investigate the procedures of public involvement to insure that neither state nor local practices unduly hinder the process.

The study committee focused its attention on integrating the state's two siting laws, Revised Statutes Annotated 162-F and RSA 162-H into a single statute. The revision creates one committee, the Site Evaluation Committee (SEC) from the two existent under the present laws.

The study committee made numerous modifications to the processes defined in the present laws to enhance the public's opportunity for input and to speed the selection process. These include increasing the jurisdiction of the SEC, decreasing the time frame, removing restrictions on direct questioning by the public in informational hearings and many others as detailed in this report.

The study committee also offers nine recommendations to insure that the process is fair and relatively swift.

The committee believes that implementation of these recommendations will assist the State in meeting its long-term energy needs as spelled out in the report of the State Electrical Energy Needs Committee.

## REPORT OF THE SITING, LICENSING AND OPERATIONS STUDY COMMITTEE

As a result of continuing concern about the ability of the State of New Hampshire to meet its growing energy needs while maintaining environmental quality, the New Hampshire General Court passed Chapter 239, Laws of 1989, creating the Energy Facility Siting, Licensing and Operations Study Committee. The law was based on Recommendation 2b of the State Electrical Energy Needs Planning Committee Report, dated November 30, 1988. The recommendation reads:

- 2b. The committee recommends that the New Hampshire General Court investigate the procedures for siting, licensing and operation of energy facilities for efficiency and fairness. The Committee further recommends that the N.H. General Court investigate the procedures of public involvement to insure that neither state nor local practices unduly hinder the process.

In testimony in support of House Bill 608, which became Chapter 239, it was noted that, despite significant progress in energy efficiency improvements, demands for energy production, handling and distribution systems would grow. Electrical generating plants typically have a minimum lead time of ten years and projections point to a need for new capacity within the New England region within five years. It is obvious that time frames which can be cut, must be cut.

It is also obvious that new facilities are difficult to site and license. The emergence of the so called NIMBY (Not In My BackYard) phenomenon, which is characterized by a generalized lack of willingness of communities or individuals to host facilities which may be required to meet greater social needs, demands that public input be unfettered by procedural rules. New and increasingly strict environmental laws also have the effect of lengthening the time periods necessary to site plants. Furthermore, appeals have sometimes prevented constructed and needed facilities from operating.

Chapter 239 described the composition of the committee and by whom the members were to be appointed. The membership was designed to bring together representation of each of the major sectors with a stake in the siting of energy producing

facilities. Heading the list were representatives of the General Court consisting of four members of House of Representatives, appointed by the Speaker, and four members of the Senate, appointed by the President.

Because this was a Legislative Committee, technically only the legislators on the committee were empowered to vote. All other members were ex-officio. The Co-chairmen, at the start, recognized the need to gather as much input as possible while avoiding the inhibition imposed by the voting rules. The committee therefore was run as an open forum utilizing a strategy of consensus building.

The others on the committee included several from government. They came from the Public Utilities Commission, the consumer advocate, the Governor's Energy Office and the Department of Environmental Services and were designated by statute. Also included was a representative from municipal government, who was appointed by the Governor and his Executive Council.

From the private sector came two representatives of electrical utilities and one from a natural gas company. Two members represented the alternative energy sector and one each represented the general business and the financial communities. All were also appointed by the Governor and Council.

The study committee focused its attention on integrating the state's two siting laws, Revised Statutes Annotated 162-F and RSA 162-H into a single statute. The revision creates one committee, the Site Evaluation Committee (SEC) from the two existent under the present laws.

The study committee made numerous modifications to the processes defined in the present laws to enhance the public's opportunity for input and to speed the selection process. These include increasing the jurisdiction of the SEC, decreasing the time frame, removing restrictions on direct questioning by the public in informational hearings and many others as detailed in this report.

The study committee also offers nine recommendations to insure that the process is fair and relatively swift.

The committee believes that implementation of these recommendations will assist the State in meeting its long-term energy needs as spelled out in the report of the State Electrical Energy Needs Committee.

## DELIBERATIONS

The committee held its first meeting on September 11, 1989 shortly after the effective date of the enabling legislation. As its first order of business, the committee nominated and elected as Co-chairmen Senator Edward C. Dupont, District 6 and Majority Leader; and Representative Beverly T. Rodeschin, Sullivan District 2 and Chairman of the House Science Technology and Energy Committee. The committee elected Jonathan Osgood, director of the Governor's Energy Office, as clerk. That first session established guidelines for the committee and a schedule of monthly meetings and permitted members to outline their concerns and expectations.

At the second meeting, the committee reviewed the State's siting laws, RSA 162-F and 162-H. The former was written to provide a mechanism through which electrical generating plants above 50 megawatts (mw) could be judged by a single entity in state government. RSA 162-H provided a similar forum concerned with energy facilities including refineries and pipelines.

The committee immediately questioned the need for separate siting boards when the composition and duties of each was essentially the same. The committee appointed a subcommittee to examine the possibility of integrating the two boards. The subcommittee found no particular rational for maintaining separate boards.

Over the next several months, the subcommittee discussed modifications to combine the boards. Changes were put in writing by Commissioner Bruce Ellsworth and the staff of the Public Utilities Commission (PUC).

The final major effort was to fully combine the individual passages of the new law so that it did not repeat requirements and was specific in its application to each type of facility. The resulting document was presented to the members at the May meeting of the full committee and became the document upon which all further modifications were made.

During the course of its deliberations, the committee learned that New Hampshire's siting laws were already among the most effective and least intrusive in the nation. In fact, the National Governors' Association Transmission Task Force had recognized the State's siting process as an example to other states of how siting should be conducted. Never-the-less, the committee noted specific flaws, ambiguities and omissions which could be clarified.



Informal testimony was taken from members of the committee. In the course of discussion several recommendations were made. Included was the suggestion that the other two Public Utility Commissioners added to the Site Evaluation Committee (SEC). (THE SUGGESTION WAS ENDORSED AND IMPLEMENTED.)

The need for greater public involvement in the process of siting facilities featured highly in many of the deliberations of the committee and the subcommittee. The two existing statutes require that public notices be placed in a newspaper having circulation in the counties which would host public meetings. (IN THE REVISIONS, THE COMMITTEE INCORPORATED REQUIREMENTS THAT MUNICIPALITIES BE NOTIFIED THROUGH THEIR TOP ELECTED OFFICIAL AND ADDITIONAL NEWSPAPERS BE USED FOR PUBLIC NOTICE.)

It was noted that the present statutes specifically preclude direct questioning of the applicants by the public at the informational hearings which initiate the existing siting committees' hearings procedure. Concern was expressed that the public could feel alienated from the process as a consequence. (THE COMMITTEE ELIMINATED THIS EXCLUSION IN ITS REDRAFT OF THE SITING PROCEDURE.)

The committee noted that there was some uncertainty of which facilities were covered by siting laws. In the case of bulk power plants, there is no description of how facilities which generate more than 30mw but less than 50mw should be evaluated. The Limited Electrical Energy Producers Act (RSA 362-A) was amended in 1989 to cover plants up to 30mw, but a gap remained. (AFTER CONSIDERABLE DISCUSSION, THE COMMITTEE RECOMMENDS LOWERING THE THRESHOLD OF SUBMISSION TO THE SEC TO 30MW TO REMOVE THE AMBIGUITY. MANY FELT THAT THIS WOULD ALLOW THE GREATER GOOD TO BE EXPRESSED BY ALLOWING CONSIDERATION OF A PROJECT, AS A WHOLE, AT THE STATE LEVEL.)

The committee recognized that any arbitrary number may, as an inadvertent consequence encourage the development of facilities sized just under the threshold to avoid the siting process. (TO PREVENT THIS AND TO ALLOW FACILITIES OF SMALLER SIZE TO BE EVALUATED AS PART OF THE STATE-WIDE ENERGY SUPPLY PICTURE, THE COMMITTEE, AFTER LONG AND ANIMATED DEBATE STRETCHING OVER THREE MEETINGS, CHOSE TO INCLUDE LANGUAGE ALLOWING THE PUC OR THE SEC TO EVALUATE OTHER PROPOSED PROJECTS.)

Inexact language was also contained in 162-H. For example, the preamble mentions that it covers "ancillary facilities" including storage tanks, but gives no guidance as to what size tanks are covered. (THE COMMITTEE DEFINED THE SIZE OF GAS STORAGE FACILITIES TO RECEIVE SCRUTINY TO THE AMOUNT OF GAS NEEDED TO OPERATE A GENERATION PLANT AT 30 MW FOR A SEVEN DAY PERIOD.)

There was general agreement that the 14 month time frame for approval of energy facilities was unnecessarily long and might preclude the construction of needed plants. (THE COMMITTEE SEPARATED THE PROCESS OF RECEIPT OF THE APPLICATION AND ITS ACCEPTANCE AND REDUCED THE TIME FRAMES TO A TOTAL OF 11 MONTHS FOR ENERGY FACILITIES AND 12 MONTHS FOR BULK POWER GENERATORS. THAT TIME IS BROKEN DOWN INTO A 2 MONTH TIME PERIOD DURING WHICH THE COMMITTEE CONSIDERS WHETHER TO ACCEPT OR REJECT THE APPLICATION AND 9 MONTHS TO EVALUATE THE PROPOSALS. A FURTHER MONTH IS RESERVED FOR THE PUC TO CONSIDER THE RECOMMENDATIONS OF THE SEC WHEN A BULK POWER GENERATOR IS INVOLVED.)

Timing is a critical concern to plant construction and the existing legislation failed to provide easily accessible time frame information. (THE REVISION CONTAINS A SEPARATE SECTION 162-H:6 WHICH SPELLS OUT ALL OF THE TIME LIMITS.)

Some question existed as to the responsibility of state agencies not represented on the Site Evaluation Committee to meet time frames and to provide feedback. (THE COMMITTEE ADDED A PROVISION REQUIRING THOSE AGENCIES TO REPORT PROGRESS WITHIN 5 MONTHS OF THE ACCEPTANCE OF THE APPLICATION AND TO RENDER A FINAL DECISION WITHIN 8 MONTHS.)

Considerable discussion involved the need to educate the public of the necessity of siting certain facilities. It was observed in a recent case, that the public thought the process was concluding with the initiation of the public sessions when, in fact, it was commencing. (THE COMMITTEE REMOVED THE LIMITATION THAT ONLY ONE INFORMATIONAL HEARING TAKE PLACE IN EACH AFFECTED COUNTY AND DIRECTED THE APPLICANT TO HOLD ADDITIONAL INFORMATIONAL HEARINGS UPON THE REQUEST OF A COMMUNITY OR THE COMMITTEE.)

The committee discussed at length whether or not it would be possible to provide the siting committee with the power, or ability, to negotiate a resolution of conditions which caused an agency not represented on the SEC to reject an application. It was felt that the opportunity for such discussion already existed among agencies represented on the SEC. (LANGUAGE WAS ADDED PERMITTING THE SEC TO RECOMMEND SPECIFIC PERMIT CONDITIONS WHICH IT FELT WOULD MEET THAT AGENCY'S CONCERN.)

The committee recommended the inclusion of the Director of the Governor's Energy Office on the SEC to advise on the overall energy requirements of the state and to promote energy conservation alternatives. (THE COMMITTEE DID SO.)

It was suggested that members of the SEC be allowed to designate alternates. (THE COMMITTEE CONCLUDED THAT SITING ENERGY FACILITIES AND POWER PLANTS WAS SO SIGNIFICANT TO THE OVERALL ECONOMIC AND ENVIRONMENTAL CONDITION OF THE STATE, THAT IT REQUIRED THE ACTIVE PARTICIPATION OF THE AGENCY HEADS, THEMSELVES.)

The committee noted that under the bulk power facility siting requirements, an applicant need not prove financial, technical and managerial ability. When the 162-F was written, the only builders of electrical plants were established utilities with a proven record. The emergence of the small power production market has made that assumption invalid. (THE COMMITTEE INCORPORATED LANGUAGE CONTAINING SUCH REQUIREMENT INTO THE INTEGRATED STATUTE.)

In discussion of the time frames, it was understood that the physical requirements for certain environmental studies take longer than the committee is allowed. (LANGUAGE SPECIFICALLY ALLOWING THE SITE EVALUATION COMMITTEE TO MAKE PERMITS CONDITIONAL UPON THE RESULTS OF FEDERAL AGENCY STUDIES WAS ADDED.)

Further testimony was taken from specific individuals who either expressed an interest in sharing ideas with the committee or who were invited to contribute. Assistant Attorney General Charles B. Holtman, who has served as Counsel to the Public under RSA 162-H on the two most recent occasions it has deliberated was asked to consider the progress of the committee and to offer recommendations. Mr. Holtman's comments were carefully prepared and delivered. First, he met with the subcommittee to comment on the work done to that time and to discuss the needs of the subcommittee. He assisted the committee by documenting his experience as counsel and making suggestions as to how the process might be improved. The following is a summary of his recommendations made by letter submitted in February of 1990.

Under present statute, an application to the committee is not considered received until the committee meets and deems it complete. It is at this time that the public counsel is appointed. His recommendation was to remove the reference to the point during the evaluation process when the public counsel is appointed. This would facilitate an earlier appointment, allowing the counsel to develop a strategy and a position on a proposal. The counsel could take necessary and appropriate actions in a more timely fashion and represent the public in a capacity now not possible. (THE COMMITTEE CONCURS AND REMOVED REFERENCE TO WHEN THE PUBLIC COUNSEL SHOULD BE APPOINTED.)

He recommended mandating that the applicant reimburse the public counsel for the expense of consultants, investigations and other related costs of public representation. This would insure that the application received a full study without forcing the public counsel, and therefore the state's general fund, to pay for work needed by the counsel. (THE COMMITTEE FELT THAT THE EXISTING PROCESS UNDER WHICH THE EXISTING SITING COMMITTEES DIRECTED THE APPLICANT TO PAY FOR STUDIES CONSIDERED TO BE JUSTIFIED WAS ADEQUATE AND WOULD PRECLUDE ANY UNWARRANTED INVESTIGATIONS.)

Mr. Holtman expressed support for a committee proposal to allow direct questioning from the public at public hearings. It not only would allow for more public participation, but also allow the public counsel to gauge public opinion. (THE COMMITTEE HAS REMOVED THE STIPULATION THAT ONLY THE SEC QUESTION THE APPLICANT AT THE INFORMATIONAL HEARINGS.)

He recommended simplifying the procedures by which a member of the public or a town government is allowed to speak at hearings. The preferred procedure is simply to allow any member of the public, or any town, to file a motion "to intervene" at the hearing and let it be ruled on by the Chairman of the committee. In other words, empower the Chair to recognize speakers during the hearing to submit what they will, either written or oral in nature. (THE COMMITTEE FELT THAT NOTHING CONTAINED IN THE LEGISLATION INHIBITED THE PUBLIC'S ABILITY TO PROVIDE INPUT.) Because of the nature of adversarial proceedings, the requirement to pre-file testimony is restrictive and antiquated. It subtracts from the natural "discovery process" that occurs and hampers the hearing. This provision should be removed for the adversarial proceedings, though it may be maintained for the informational ones. (THE COMMITTEE FELT THAT THE EXISTING PROCESS PROVIDED THE MOST EFFECTIVE MECHANISM TO INSURE ACCURATE INPUT TO THE ADVERSARIAL HEARINGS.)

Mr. Holtman makes the recommendation that certain studies, such as wildlife, archaeological, and air emission modeling, should be submitted before the application is deemed complete. This procedure would help to avoid problems incurred when a statutory deadline is shorter than the time required to conduct the studies. This could jeopardize the project in that it could force the public counsel to take a position demanding the studies be completed before the review process was initiated, hence lengthening the process. (THE COMMITTEE NOTED THAT THE NEED FOR SOME STUDIES WILL ONLY BE IDENTIFIED BY THE HEARINGS AND THAT THERE IS NOTHING IN THE LEGISLATION WHICH SUGGESTS THAT AN APPLICANT COULD NOT INITIATE THE STUDIES DEFINITELY REQUIRED PRIOR TO FILING AN APPLICATION WITH THE SEC.)

To shorten the overall time frame for review, Attorney Holtman made the following suggestions: (1) Retain the existing time limit, measured from the point of application completeness (14 months for the SEC and 16 months for the PUC), as the outside limit for project review. (2) Require that final decisions be made within a certain time from the close of adversarial hearings, for example, one month for subsidiary agencies and three months for the committee. (3) Direct the committee chairman, following a conference with the parties, to establish a schedule for the hearing process--which allows for a great measure of flexibility and shorter periods of review. (THE COMMITTEE SAW THE WISDOM OF SHORTENING THE TIME FRAME OF THE DELIBERATION WHEN SPECIFYING THE DISTINCTION BETWEEN RECEIPT AND ACCEPTANCE OF THE APPLICATION AS NOTED BELOW.)

He urged amending the statute to insure a clear distinction between the actual "receipt of an application" and the committee's determination that an application is complete, ensuring that the latter point serves as the trigger date for the initiation of proceedings. (THE COMMITTEE AGREED WITH THIS POINT AND LIMITED THE TIME BETWEEN RECEIPT OF THE APPLICATION AND ITS ACCEPTANCE TO 60 DAYS, WITH THE PROVISION THAT AN APPLICATION IS NOT DEEMED RECEIVED UNTIL IT CONTAINS ALL REQUIRED INFORMATION.)

Attorney Holtman noted that current provisions mandate that agencies with jurisdiction need only notify the applicant if the application is not complete and suggested changing it to require all said agencies to reply in writing within one month of receiving the application. (THE COMMITTEE DETERMINED THAT THERE WAS NO COMPELLING REASON TO IMPOSE THIS ADDITIONAL REQUIREMENT ON AGENCIES.)

Mr. Holtman recommended providing general authority for the chairman to toll the running of the statutory time frame, on his own motion or at the request of the party, if it is determined that additional information is needed. (NEW SECTION 162-H:16 SPELLS OUT THE SEC'S ABILITY TO TEMPORARILY SUSPEND ITS DELIBERATIONS.)

He opposed the proposed four-month time limit for an agency decision inadvertently written in an early draft. The limit could have serious adverse effects on basic timing requirements already in effect. (THE COMMITTEE CORRECTED THE ERROR BY REQUIRING A PROGRESS REPORT FROM AGENCIES WITHIN 5 MONTHS AND A FINAL DECISION WITHIN 8 MONTHS.)

He suggested that applications include written documentation from each affected town, signed by the town's designated contact, that it has been notified of the proposal and of the state review process. (THE COMMITTEE CHOSE TO REQUIRE THE APPLICANT TO DOCUMENT THAT THE CHIEF ELECTED OFFICIAL IN EACH COMMUNITY HAD BEEN NOTIFIED IN WRITING.)

He recommended that appropriate bodies of a affected communities be automatically placed on the service list, insuring that they are actually notified and not reliant on published notice during the course of the proceedings. (Provision of intervention as of right.) (THE COMMITTEE FELT THAT COMMUNITIES SHOULD REQUEST TO BE ON THE SERVICE LIST.)

Mr. Holtman recommended allowing the towns to conduct their own review processes because this would permit a more local response to routing decisions. (THE COMMITTEE FELT THAT IT WAS UNREASONABLE TO EXPECT COMMUNITIES TO REVIEW FACILITIES IN SEPARATE PROCESSES WHEN THE DECISION OF THE SEC IS DEFINED TO BE

THE FINAL AUTHORITY. IT WAS FELT THAT THE ONE STOP SITING CONCEPT THAT IS THE BASIS OF NH'S SITING STATUTES WOULD BE SEVERELY UNDERMINED AND THE ABILITY OF THE SEC TO EVALUATE THE OVERALL SOCIAL IMPACTS OF FACILITIES WOULD BE COMPROMISED.)

Mr. Holtman noted that the relationship between the "Declaration of Purpose" and the "Findings" sections are unclear. He believed specific findings are required in addition to, and not in lieu of, the concepts enunciated in the "Declarations of Purpose". Therefore, he recommended explicitly tying the "Findings" to the "Declaration of Purpose". (THE COMMITTEE, IN INTEGRATING THE TWO STATUTES AND COMBINING THE FINDINGS REQUIREMENTS IN EACH, REMOVED THE AMBIGUITY.)

He suggested that in order to raise awareness of energy conservation needs, declarations of purpose and perhaps the findings sections should state that conservation possibilities are to be considered in weighing the need for proposed facilities. (THE COMMITTEE INCLUDED SPECIFIC REFERENCE TO RSA 378:37 WHICH DEFINES LEAST COST ENERGY PLANNING AS STATE POLICY. FURTHERMORE THE COMMITTEE MADE THE DIRECTOR OF THE GOVERNOR'S ENERGY OFFICE A MEMBER OF THE SEC.)

Attorney John Dabuliewicz, who had been General Counsel to the Energy Facility Evaluation Committee in the Champlain Pipeline proceedings agreed to address the committee. His suggestions are summarized as follows along with the committee's response:

He recommended that a specific preapplication process should be developed and public counsel should be available to participate in preapplication process. (AS NOTE EARLIER, THIS PROVISION WAS ACCEPTED BY THE COMMITTEE AND INCORPORATED IN THE REDRAFT.)

He said the use of each agency's forms should be specified as comprising the Site Evaluation Committee application. and provision for each agency to collect its own fees should be specified. (SPECIFIC LANGUAGE WAS ADDED TO INCORPORATE THIS RECOMMENDATION.)

Attorney Dabuliewicz commented that the committee should have one name. (THE COMMITTEE WILL BE KNOWN AS THE SITE EVALUATION COMMITTEE.)

The ability of the site evaluation committee to suspend proceedings should be clarified, he asserted. (THE COMMITTEE CONCURRED ADDING LANGUAGE IN SECTION 162-H:16 WHICH ALLOWS SUSPENSION OF DELIBERATIONS IF IT IS IN THE PUBLIC INTEREST.)

He felt that the requirement that 5 year plans be filed by utilities should be clarified to exclude small power producers. (THOSE WHO DEAL WITH THESE PLANS FEEL THAT THERE IS ADEQUATE UNDERSTANDING OF THE SYSTEM NOW.)

He noted that time frames must contain provisions for delays caused by federal agencies and the applicant itself. (THE COMMITTEE ADDED LANGUAGE IN SECTION 162-H:18,VII STATING THAT THE CERTIFICATE MAY BE CONDITIONED UPON THE RESULTS OF REQUIRED FEDERAL AGENCY STUDIES WHOSE STUDY PERIOD EXCEEDS THAT OF THE APPLICATION PERIOD.)

Mr. Dabuliewicz noted that executive order agency personnel typically are not be included in legislation. (AS NOTED ABOVE, THE COMMITTEE CHOSE TO INCLUDE THE DIRECTOR, GOVERNOR'S ENERGY OFFICE, TO REPRESENT THE CONSERVATION ALTERNATIVES. THE SIGNIFICANCE OF THAT NEED OUTWEIGHS OTHER CONCERNS.)

Finally he recommended that the entire revision should be redrafted to more closely integrate the two existing statutes. (THE RECOMMENDED BILL WAS REDRAFTED TO DO SO.)

## OPERATIONS

In its May, 1990 meeting, the committee focused on the plant operations segment of its responsibilities. The committee heard from members who represent energy facilities. The consensus was that although there are significant limitations on the operations of plants, most arise from factors outside of the direct jurisdiction of the New Hampshire siting process. It was felt that the State should take an advocacy role in support of the position adopted by the Site Evaluation Committee once that process had been completed. If the SEC issues a certificate it the State should be prepared to act before regulatory authorities in other States or in the federal government. A recommendation to this effect is incorporated.

The committee learned that all but one of the wood-fired small power production facilities in the State are operating under temporary permits which last for 18 months. Technically, during the course of the first 18 month permit, the permanent license should be issued. The temporary permit allows the plant to be tested to insure that it meets the design criteria.

The committee was informed that permit conditions are being changed subsequent to the construction of the plant. The plant is then asked to meet the new conditions under a new temporary permit. The committee felt that it is not appropriate for agencies to impose new conditions in this manner. The environmental circumstances of the State cannot have changed sufficiently within the 18 month time frame to justify new conditions. The committee strongly urges State and federal agencies to accept the original permit conditions as adequate for the issuance of a permanent operating license. The committee felt that the imposition of new conditions was incompatible with the nation's responsibility to insure the development of an orderly marketplace with sufficient energy resources to meet growing demands.

It was recognized that the inadvertent effects of tighter permit conditions and construction standards include higher costs to the consumer and continued utilization of older, dirtier, and less safe and efficient facilities when they might otherwise have been phased down or out. For instance, delay in putting waste-to-energy facilities on line can result in continued use of inadequate landfills.

The committee considered whether a policy should be developed to guide the siting of energy facilities or bulk power facilities which are designed to primarily serve customers outside of the



State. The discussion pointed out that industrial facilities which produce other products for export are usually encouraged to build within the State for their employment and tax base benefits. There appeared to be no reason why energy plants should not be considered similarly. The Public Utilities Commission felt that the present wording of the statutes gave adequate flexibility to evaluate such cases.

## **RECOMMENDATIONS**

The following are the recommendations of the Siting, Licensing and Operations Study Committee.

### **RECOMMENDATION:**

- 1) THE COMMITTEE RECOMMENDS THAT THE NEW HAMPSHIRE GENERAL COURT PASS THE INTEGRATED VERSION OF RSA 162-H DEFINED HEREIN AS A SUBSTITUTE TO THE EXISTING 162-H AND 162-F.
- 2) THE COMMITTEE RECOMMENDS THAT RELEVANT STATE AGENCIES TAKE AN ACTIVE ROLE AS ADVOCATES OF THE POSITION OF THE SITE EVALUATION COMMITTEE IN CASES WHERE OTHER JURISDICTIONS ARE DELIBERATING.
- 3) THE COMMITTEE RECOMMENDS THAT THE STATE THROUGH THE SITE EVALUATION COMMITTEE AND ALL OTHER STATE AGENCIES AND BOARDS OR COMMITTEES RECOGNIZE ENERGY EFFICIENCY AS THE POLICY OF THE STATE AND TAKE ACTIVE STEPS TO INSURE THAT ENERGY RESOURCES ARE USED EFFECTIVELY AND EFFICIENTLY.
- 4) THE COMMITTEE URGES THE FEDERAL GOVERNMENT AND OTHER JURISDICTIONS TO RECOGNIZE THAT DEFINITE TIME FRAMES ARE NECESSARY TO INSURE THE CONSTRUCTION OF NEEDED ENERGY PRODUCING OR TRANSPORTING FACILITIES. DELAYED CONSIDERATION OF INAPPROPRIATE SITES POSTPONES THE SEARCH FOR BETTER ALTERNATIVES.
- 5) THE COMMITTEE URGES THE FEDERAL GOVERNMENT AND ALL STATE LEGISLATURES AND AGENCIES COMPREHENSIVELY REVIEW THE ENERGY IMPLICATIONS OF ENVIRONMENTAL LAWS AND REGULATIONS.
- 6) THE COMMITTEE RECOGNIZES THAT ENVIRONMENTAL IMPACTS WILL RESULT FROM CONSTRUCTION OF ENERGY FACILITIES AND THAT IT IS THE RESPONSIBILITY OF THE SITE EVALUATION COMMITTEE TO INSURE THAT THOSE IMPACTS ARE MINIMIZED.

- 7) THE COMMITTEE STRONGLY URGES STATE AND FEDERAL AGENCIES TO ACCEPT SATISFACTION OF THE ORIGINAL CONDITIONS ESTABLISHED FOR PLANT CONSTRUCTION AND OPERATION AS ADEQUATE FOR THE ISSUANCE OF A PERMANENT OPERATING LICENSE. DEMANDING COMPLIANCE WITH ADDITIONAL REQUIREMENTS AS A CONDITION FOR A PERMANENT LICENSE IS NOT CONDUCTIVE TO THE DEVELOPMENT OF AN ORDERLY MARKETPLACE.
- 8) THE COMMITTEE URGES OTHER STATE AGENCIES WHOSE PERMITTING REQUIREMENTS MAY INDIRECTLY AFFECT THE OPERATION OF FACILITIES WHICH HAVE BEEN APPROVED BY THE SITE EVALUATION COMMITTEE TO CAREFULLY EVALUATE RULINGS WHICH MAY INTERFERE WITH THE OPERATION OF THESE NECESSARY FACILITIES.
- 9) THE COMMITTEE RECOMMENDS THAT THE GENERAL COURT SEPARATE RSA 162-F:14 THROUGH :26 WHICH ESTABLISH AND GUIDE THE FUNCTIONING OF THE NUCLEAR DECOMMISSIONING FUND INTO A DISTINCT STATUTE. THOSE SECTIONS ARE NOT DIRECTLY RELATED TO ENERGY FACILITY SITING.

The committee offers these recommendations to Governor Judd Gregg and the General Court in the sincere belief that when instituted a marked improvement to the State's ability to site energy facilities will result. This improvement will enhance the general public's opportunity to comment and make suggestions while providing a more definite process with firm time frames for developers to follow to construct necessary facilities. The committee also believes that these recommendations will clarify the role of the various elements of state government involved and reduce the uncertainties in the siting process. The ultimate result will be that energy resources are made available to the citizens of the State sooner and at a lower cost than they would have been under the existing statutes.

APPENDIX I        REVISED VERSION OF RSA 162-H

APPENDIX Ia      GENERAL SUMMARY OF CHANGES

APPENDIX Ib      TABLE OF CONTENTS

APPENDIX Ic      REVISED VERSION OF RSA 162-H

APPENDIX Id      DETAILED SUMMARY OF CHANGES

**APPENDIX Ia . GENERAL SUMMARY OF CHANGES**

## SUMMARY OF CHANGES

The changes proposed herein are summarized below:

Consolidates RSA 162-F and RSA 162-H into a single statute

Incorporates the provisions of HB 1344, which was enacted into law in the last session of the legislature

Clarifies the types of facilities over which committee has jurisdiction

Provides the committee an opportunity to waive decisionmaking

Increases the opportunities for local government and public to participate

Adds the Director of the Governor's Energy Office to the committee

Reduces the decisionmaking time to 10 months for generating facilities, and to 9 months for energy facilities

Increases the opportunity for the Attorney General to participate

APPENDIX Ib TABLE OF CONTENTS

## CHAPTER 162-H

### ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATIONS

#### TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
162-H:1	Declaration of Purpose	1
162-H:2	Definitions	2
162-H:3	Site Evaluation Committee	3
162-H:4	Powers of Committee	4
162-H:5	Prohibition	5
162-H:6	Time Frames	5
162-H:7	Application for Certificate	6
162-H:8	Disclosure of Ownership	8
162-H:9	Counsel for the Public	8
162-H:10	Public Hearing; Studies; Rules	9
162-H:11	Judicial Review	10
162-H:12	Enforcement	10
162-H:13	Penalties	11
162-H:14	Separability	11
162-H:15	Records	11
162-H:16	Temporary Suspension of Deliberations	12
162-H:17	Informational Meetings	12
162-H:18	Findings	12
162-H:19	Plans	14
162-H:20	Review; Hearing	15



APPENDIX Ic REVISED VERSION OF RSA 162-H

## CHAPTER 162-H

### ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATIONS

#### 162-H:1 Declaration of Purpose.

I. The legislature recognizes that the selection of sites for energy facilities will have a significant impact upon the welfare of the population, the economic growth of the state and the environment of the state. The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the possible need for new energy facilities in New Hampshire; that undue delay in construction of any needed facilities be avoided; and that the state insure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of energy facilities. The legislature also recognizes that it has a broad responsibility to provide both economic and environmental protection for its coastal and estuarine waters and the adjoining land areas. The legislature therefore declares it to be its policy that any offshore facility (other than pipelines) shall be located so as to at least comply with the policies and guidelines of the Federal Environmental Protection Agency; and that this policy may be relaxed only if it is shown by clear and convincing evidence that there are compelling technological or economic reasons for doing so, that no feasible alternative exists, and that there will be no substantial environmental risk.

II. The legislature also finds that the present and predicted growth in electric power demands in the state of New Hampshire requires the development of a procedure for the selection and utilization of sites for generating facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state. The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the need for new power sources; that electric power supplies must be constructed on a timely basis; that in order to avoid undue delay in construction of needed facilities and to provide full and timely consideration of environmental consequences, all electric entities in the state should be required to engage in adequate

long-range planning and provide full and complete disclosure to the public of such plans; that a certifying body be established for the preconstruction review of bulk power supply facilities; that the siting of bulk power plants and high voltage transmission lines should be treated as a significant aspect of land-use planning in which all environmental, economic and technical issues should be resolved in an integrated fashion so as to assure the state an adequate and reliable supply of electric power in conformance with sound environmental utilization. The legislature, therefore, hereby establishes a procedure for the planning, siting, and construction of bulk power supply facilities.

#### 162-H:2 Definitions.

I. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed energy facility, but does not include land surveying, optioning temporary use of the land for public recreation uses or necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

II. "Energy" means power, including mechanical power or useful heat, derived from any resource, including, but not limited to, oil, coal, and gas.

III. "Energy facility" means any industrial structure, other than bulk power supply facilities as defined herein that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, and means also such ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure; without limiting the generality of the foregoing, such industrial structures include oil refineries, plants for processing liquefied natural gas, and plants for coal conversion; further without limiting the generality of the foregoing, such ancillary facilities include onshore and offshore loading and unloading facilities, pipelines, and storage tanks, or any other facilities which the petitioner requests and the committee or commission agrees, or which the committee or commission determines, requires a certificate.

IV. "Bulk power supply facilities" means:

(a) Electric generating station equipment and associated facilities designed for or capable of operation at any capacity of 30 megawatts or more, or electric generating station equipment and associated equipment which the petitioner requests and the committee or commission agrees, or which the committee or commission determines, should require a certificate.

(b) An electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility outlined in (a), over a route not already occupied by a transmission line or lines;

(c) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length over a route not already occupied by a transmission line, or an electric transmission line which a petitioner requests and the committee or commission agrees, or which the committee or commission determines, should require a certificate.

(d) A gas plant, equipment and associated facilities designed to use any, or a combination of natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide seven (7) days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, or any such gas facility which a petitioner requests and the committee or commission agrees, or which the committee or commission determines, should require a certificate.

V. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.

VI. The words "public utility" or "utility" means any electric utility engaged in the production, distribution, sale, delivery or furnishing of electricity, including municipalities, cooperatives, regulated electric companies, agencies or any combination thereof.

VII. "Acceptance" means the date at which the committee finds that the application is adequate for filing.

VIII. "Receipt" means the date at which the application is first submitted to the committee.

#### 162-H:3 Site Evaluation Committee.

The site evaluation committee shall consist of the commissioner of the department of environmental services, the director, division of water supply and pollution control, the commissioner of the department of resources and economic development, the director of the division of public health services, the executive director of the fish and game department, the director of the office of state planning, the director of the division of water resources, the director of state parks, the director of forests and lands, the director of the division of air resources, the director of the governor's energy office, the commissioner of the department of transportation, and the commissioners and chief engineer of the public utilities commission. The commissioner of the department of environmental

services shall be chairman of the committee, and the chairman of the public utilities commission shall be vice-chairman. Notwithstanding any other agency authority to the contrary, no member may delegate a voting right to others.

162-H:4 Powers of the Committee

I. The committee shall have the authority and responsibility for:

(a) Issuing any certificate hereunder in the case of an energy facility, or forwarding its findings to the commission in the case of a bulk power supply facility;

(b) The determination of the terms and conditions of any certificate or findings issued hereunder, subject to RSA 162-H:10;

(c) The monitoring of the construction and operation of any energy facility granted a certificate hereunder;

(d) The enforcement of the terms and conditions of any certificate issued hereunder;

II. The committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate.

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate hereunder to such state agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and conditions of a certificate, or enforce a certificate. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

IV. In cases where the committee determines that other existing statutes provide adequate protection of the objectives of RSA 162-H:1, the committee may, within 60 days of receipt of the petition, exempt the applicant from the approval and certificate provisions of this chapter. The committee shall adopt rules under RSA 541-A specifying the criteria under which an exemption may be granted.

I. No person shall commence to construct any bulk power facility within the state unless it has obtained a certificate of site and facility, with respect to those facilities, issued by the public utilities commission. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. Such certificates are required for sizable additions to existing facilities as defined by the commission.

II. No person shall commence construction of an energy facility within the state or operate such a facility without a certificate of site and facility from the site evaluation committee. Such a certificate may not be transferred or assigned without the approval of the committee.

III. No certificate is required for facilities already under construction or in operation, but such certificates are required for changes or additions to such facilities.

IV. Any proposed facility which has one or more permit application(s) pending before any state agency on the effective date of this chapter, shall be exempt from certification hereunder. Said application(s) shall be governed by the applicable laws, rules and regulations of such agencies. Notwithstanding the foregoing, a facility may request the SEC to assume jurisdiction and in the event that the SEC agrees to assert jurisdiction, said facility shall be subject to the provisions of this chapter.

I. Upon receipt of an application, the committee shall immediately forward to each of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, a copy of such parts of the application as are relevant to its jurisdiction. Upon receipt of such a copy, each of such other state agencies shall immediately conduct a preliminary review as described in RSA 162-H:7, III.

II. Upon receipt of an application, the committee shall immediately conduct a preliminary review thereof to ascertain if it contains sufficient information to carry out the purposes of this chapter. The committee shall require such information as it deems necessary to accompany such application.

III. The committee shall decide whether or not to accept the application for filing within 60 days of receipt.

IV. Within 30 days after the acceptance of the application, the committee shall hold at least one public hearing in each county in which the proposed facility is to be located.

V. The committee shall adopt rules pursuant to RSA 541-A requiring progress reports from all participating state agencies within 5 months of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision.

VI. Each of any state agencies as have jurisdiction as detailed under RSA 162-H:7 shall make and submit to the committee a final decision on such parts of the application as relate to its jurisdiction not later than 8 months after it has received its copy of such parts.

VII. Within 9 months of the acceptance of an application, the committee shall either:

(a) issue or deny a certificate for the construction of an energy facility, or

(b) send its findings to the commission for a certificate for the construction of a bulk power facility. The commission shall either issue or deny that certificate within 10 months of the acceptance of the application.

162-H:7                      Application for Certificate

I. All applications for a certificate to construct a bulk power supply facility shall be filed with the commission, and such plans may be subject to reasonable modification during the period of review. Applications shall include each individual agency's application forms. As a prerequisite to such filing, except for good cause shown as determined by the committee, an electric utility shall have complied with the provisions of RSA 162-H:19; and with respect to power plants and transmission line routes, except for good cause shown as determined by the committee, shall have complied with the requirement that the site selected is from among those sites in the electric utility's five year inventory of sites approved by the committee and that it will utilize the general transmission line routes identified in its long range plans.

II. All applications for a certificate to construct an energy facility shall be filed with the chairman of the site evaluation committee. Applications shall include each individual agency's application forms.

III. Upon receipt of such an application, the committee shall immediately conduct a preliminary review thereof to ascertain if it contains sufficient information in accordance with this paragraph. If the application does not contain such sufficient information, the committee shall, in writing, immediately notify the applicant of that fact and specify what information the applicant must supply.

IV. Each application shall contain sufficient information to satisfy the application requirements of each of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each individual agency's application forms. Upon receipt of an application, the committee shall immediately make copies thereof, the cost of which making shall be borne by the applicant, and shall immediately forward to each of such other state agencies a copy of such parts of the application as are relevant to its jurisdiction. Upon receipt of such a copy, each of such other state agencies shall immediately conduct a preliminary review thereof to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of such other state agencies, that agency shall, in writing, immediately notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made hereunder shall be deemed not received either by the committee or by any of such other state agencies if the applicant is seasonably notified that it has not supplied sufficient information for any of such other state agencies in accordance with this paragraph.

V. An application hereunder shall also:

(a) Describe in reasonable detail the type and size of each major part of the proposed facility;

(b) Identify both the first choice and any other choices for the site of each major part of the proposed facility;

(c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment of each site proposed; whether as first choice or as any other choice; for such part;

(d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems;



(e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility;

(f) Document that written notification of the proposed project has been given to the chairman of the board of selectmen, or mayor, which ever is applicable in each community in which the proposed facility is to be located;

(g) Provide such additional information as the committee may require to carry out the purposes of this chapter.

VI. The committee shall decide whether or not to accept the application for filing within 60 days of its receipt. If the committee rejects the application, the applicant may choose to file a new and more complete application.

VII. Notwithstanding any other provision of law, the application shall be in lieu of all applications otherwise requireable by any of such other state agencies.

VIII. Nothing within this chapter shall preclude an agency from imposing its usual statutory fees.

IX. Whenever a petitioner requests, or the committee or commission determines, that a petition should be considered for certification, such consideration shall be made by vote of the committee or commission within 60 days of the date that the petitioner announces an intent to construct the project, and the vote shall be made after public hearing and the opportunity for all parties to present testimony on the need for consideration of the certificate.

162-H:8                      Disclosure of Ownership.

I. Any application for a certificate shall be signed and sworn to by the person or executive officer of the association or corporation making such application and shall contain the following information:

(a) Full name and address of the person, association or corporation;

(b) If an association, the names and residences of the members of the association;

(c) If a corporation, the name of the state under which it is incorporated with its principal place of business and the names and addresses of its directors, officers and stockholders;

(d) The location or locations where an applicant is to conduct its business;

(e) A statement of assets and liabilities of the applicant and other relevant financial information of such applicant.

II. The applicant shall immediately inform the committee of any substantive modification to its plan.

162-H:9 Counsel for the Public.

I. Upon notification that an application for a certificate has been received by the committee in accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action.

II. This section shall not be construed to prevent any person from being heard or represented by counsel; provided, however, the committee may compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests.

162-H:10 Public Hearing; Studies; Rules.

I. Within 30 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee and, if a bulk power supply facility application, the commission, shall hold at least one joint public hearing in each county in which the proposed facility is to be located and shall publish a public notice not less than 21 days before said hearing in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facilities. Such public hearings shall be a joint hearings, with representatives of such other agencies as have jurisdiction over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. The hearings shall be for public information on the proposed facilities with the applicant presenting the information to the site evaluation committee and to the public. Notwithstanding any other provision of law, the hearing shall be a joint hearing with such other state agencies and shall be in lieu of all hearings otherwise requireable by any of such other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of such other state

agencies so to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.

II. Subsequent hearings shall be in the nature of adversary proceedings and may be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation committee. The committee shall give adequate public notice of the time and place of each subsequent session.

III. The site evaluation committee and, if a bulk power supply facility application, the commission, shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings. The committee and the commission shall grant free access to records and reports in its files to members of the public during normal working hours and shall permit copies of such records and reports to be made by interested members of the public at their expense.

IV. The site evaluation committee and, if a bulk power supply facility application, the commission, shall require such information from the applicant as it deems necessary to assist the conduct of hearings and any investigation or studies it may undertake and in the determination of the terms and conditions of any certificate under consideration.

V. The site evaluation committee and, if a bulk power supply facility application, the commission, shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee in the case of an energy facility or the committee and the commission in the case of a bulk power supply facility. The site evaluation committee, the commission, and counsel for the public as provided for by RSA 162-H:9 are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter.

VI. The site evaluation committee and, if a bulk power supply facility application, the commission, shall jointly issue such rules and regulations, pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required to carry out the provisions of this chapter.

Decisions made pursuant to this chapter by the site evaluation committee, or by any other state agency, shall be reviewable in accordance with RSA 541.

I. Whenever the committee determines that any term or condition of any certificate issued hereunder is being violated, it shall, in writing, notify the person holding such certificate of the specific violation and order such person immediately to terminate such violation. If, 15 days after receipt of such order, such person has failed or neglected to terminate such violation, the committee may suspend such person's certificate; provided, however, except for emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

II. The committee may suspend a person's certificate if the committee determines that such person has made a material misrepresentation in the application or in the supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that such person has violated the provisions of this chapter or regulations issued hereunder; provided, however, except for emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

III. The committee may revoke any certificate that is suspended hereunder after the person holding such suspended certificate has been given at least 90 days written notice of the committee's consideration of revocation and of its reasons therefor and has been provided opportunity for a full hearing thereon.

I. The superior court in term time or in vacation may enjoin any act in violation of this chapter.

II. Any construction or operation of bulk power supply or energy facilities in violation of this chapter, or in material violation of the terms of a certificate issued hereunder, may result in an assessment by the superior court of civil damages not to exceed \$10,000 for each day of such violation.

III. Whoever commits any willful violation of any provision of this chapter shall be guilty of a misdemeanor of a natural person, or guilty of a felony if any other person.

If any provision or clause of this chapter, or application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions of applications of the chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared to be severable. Each section of this chapter shall be separable from all other sections hereof and the nullification of any section of this chapter shall have no effect upon the remaining sections of this chapter.

Complete verbatim records shall be kept by the committee of all hearings, and records of all other actions, proceedings and correspondence of the committee shall be maintained, all of which records shall be open to the public inspection as provided for under RSA 91-A.

I. If the site evaluation committee at any time during its deliberations relative to an application for a certificate deems it to be in the public interest, it may temporarily suspend its deliberations.

II. The committee may temporarily suspend its deliberations and request the commission to exercise its duties under this chapter. After deliberations have been so suspended and the commission finds that the requirements of that chapter have been met and so notifies the site evaluation committee, the site evaluation committee shall resume its deliberations under this chapter.

Upon request of a community in which the proposed facility is to be located, or upon request of the committee, the applicant shall provide informational meetings to inform the public of the proposed project.

I. The committee shall incorporate in any certificate or findings issued hereunder such terms and conditions as may be specified to the committee by any of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate hereunder if any of such other state agencies denies authorization for the proposed activity over which it has jurisdiction. The denial of any such

authorization shall be based on the record and explained in reasonable detail by the denying agency. Notwithstanding any other provision of law, each of such other state agencies shall make and submit to the committee a final decision on such parts of the application as relates to its jurisdiction not later than 8 months after acceptance of the application. Notwithstanding any other provision of this section or this chapter, each of such other state agencies shall retain all of its powers and duties of enforcement.

II. Findings by the site evaluation committee shall be based on the record and shall be made by a majority vote of a full committee whether or not the full committee is present for voting. A majority vote of the site evaluation committee shall be conclusive on all questions of siting, land use, air and water quality. The public utilities commission shall cast a single vote in these findings.

III. The committee and, in the case of a bulk power certificate, the commission may consult with interested regional agencies and agencies of border states in the consideration of such certificates.

IV. In the case of energy facilities, the site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that the site and facility:

(a) Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.

(b) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.

(c) Will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment, and public health and safety.

V. In the case of bulk power supply facilities, the commission shall issue or deny a certificate of site and facility. The commission shall issue a certificate only after it has reasonable assurance that all applicable state standards and requirements shall be met by the applicant. The commission shall incorporate in its certificate such lawful terms as may be supplied to it by the site evaluation committee and those state agencies having permit or license granting responsibilities under state law. The commission shall be bound by the findings

of the site evaluation committee under paragraph I. In its decision the commission must find the construction of the facility:

(a) Is required to meet the present and future need for electricity. A finding that the construction of the facility is required to meet the present and future need for electricity may be based upon a determination of need for capacity to generate electricity, need for a greater supply of electricity, or need for more economic, reliable, or otherwise improved sources of either capacity or energy. The commission shall consider economic factors when considering whether or not the facility will meet the present or future needs for electricity;

(b) Will not adversely affect system stability and reliability factors.

VI. A certificate of site and facility may contain such reasonable terms and conditions as it deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued shall be final and subject only to judicial review.

VII. The committee may condition the certificate upon the results of required federal agency studies whose study period exceeds the application period.

#### 162-H:19 Plans

Each utility shall prepare annually its long-range plans for bulk power supply facilities pursuant to guidelines established by the public utilities commission. Such guidelines shall be approved by the site evaluation committee which may make such modifications as it may deem necessary within the purposes of this chapter. These plans may be part of a regional plan and shall:

I. Describe the general location, size and type of all bulk power supply facilities to be owned or operated by such utility and whose construction is projected to commence during the ensuing 10 years or during such longer period, but not to exceed a total of 15 years, as the commission may determine to be necessary, together with an identification of all existing facilities to be removed from utility serviced through such period or upon completion of construction of such bulk power supply facilities.

II. Identify the location of tentative sites for the construction of future power plants as defined in RSA 162-H:2,V, including an inventory of sites for all plants on which construction may be commenced in the succeeding 5 years, and the general location of the routes of transmission lines as defined in RSA 162-H:2,V and indicate the relationship of the planned

sites, routes, and facilities thereon to the environment, and describe generally how potential adverse effects will be lessened. Such sites shall be indicated in relation to the location of existing plants and tentative sites planned or announced by utilities within a 200 mile radius of the site.

III. Reflect and describe such utility's efforts to involve environmental protection and land-use planning agencies in their planning agencies in their planning process so as to identify environmental problems at the earliest possible stage in the planning process.

IV. Supply additional information as the site evaluation committee, upon the advice of interested state and federal agencies, may from time to time prescribe to carry out the purposes of this chapter.

V. Each utility shall give initial public notice of its plans referred to in paragraph I by filing annually a copy of such plans, together with its projections of demand for electricity that the facilities would meet, with the public utilities commission and with such other affected state and local governmental authorities and citizens' environmental protection and resource planning groups requesting such plans.

162-H:20                      Review; Hearing.

Upon receipt of plans referred to in RSA 162-H:20, the public utilities commission shall notify the site evaluation committee which shall:

I. Review and comment on the long-range plans and make information contained therein readily available to the general public and interested state and local governmental entities;

II. Compile and publish a description of the proposed power plant sites and general locations of transmission line routes within the state as identified in the long-range plans, identifying the location of such sites and the possible year when construction is expected to commence and to make such information readily available to the public, to newspaper regularly circulated within the area affected by the proposed site, and to interested state and local governmental entities. The duties imposed by this paragraph may be delegated to the public utilities commission, and all documents filed under this chapter shall be held in the offices of the public utilities commission.